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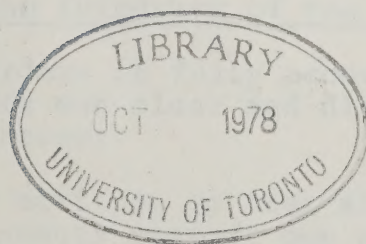


19th ANNUAL PREMIERS' CONFERENCE


A Restatement of Ontario's Views
on Canada and the Constitution

THE HONOURABLE WILLIAM G. DAVIS, Q.C.

PREMIER OF ONTARIO



Regina/Waskesiu
August 9-12, 1978



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SUMMARY

- . Ontario believes there are three main sets of national priorities for Canada. These are economic recovery, reform of the day-to-day practices of federalism, and constitutional change. All three sets of priorities must be pursued to restore the political and economic health of Canada.
- . While Ontario believes the present constitution has served the country well, it acknowledges that there are many Canadians who are deeply dissatisfied with the current constitutional arrangements. For this reason, Ontario is willing to give careful consideration to any reasonable proposals for constitutional change.
- . To be effective in resolving Canada's current problems and to be enduring, constitutional change must be the product of federal and provincial consensus. It cannot be imposed by one of the partners in the federation. Moreover, the discussions must be comprehensive so that all related aspects of the constitution can be considered before the changes are implemented.
- . Ontario will judge proposals for change from the following perspective of fundamental principles:
 1. The Maintenance of Responsible Government
 - . federal and provincial governments democratic and parliamentary in form;
 - . retention of the substantive functions of the monarchy.
 2. Respect for the Integrity of the Federal System
 - . two equal orders of fully accountable government each with its own clear and distinct set of responsibilities;
 - . a change of attitude so that all citizens and their governments respect one another.
 3. An Independent Judiciary
 - . the Supreme Court of Canada must be a court of the whole federation;
 - . its mandate and the selection of its members must be based on merit and compatible with the continued independence of the judiciary.

4. The Official Languages of Canada

- . Canada's two official languages should be guaranteed by appropriate constitutional means, such guarantees to be extended across the country in a true national context.

5. An Economic Union

- . Canada must ensure its continued development as an indivisible economic, as well as political, union.

6. Federal-Provincial Consultation

- . governments are obliged to co-operate on behalf of all Canadians and, in particular, to reconcile differences between them through new or reformed institutions for intergovernmental consultation and co-operation.

INTRODUCTION

While Canada demands much of its citizens, and its citizens much of their country, the common demand is simpler. Each of us expects the opportunity to earn a decent living in an atmosphere characterized by the steady development of prosperity combined with a peaceful and harmonious relationship with our fellow Canadians whatever their origin. This is not a country where the constitution should permit some to opt in and some to opt out nor a country where the constitution speaks of special status for a few. We must strive for a society with equal opportunities for all, and it is this effort which Ontario seeks to foster and about which this restatement speaks.

I NATIONAL PRIORITIES

In his statement to the Task Force on Canadian Unity in November 1977, Premier William G. Davis set out three areas which he proposed as the priorities for Canadians and their governments over the next few years. The Ontario Government believes that these three priorities remain just as compelling today. They are:

- . economic restructuring and recovery;
- . reform of the day-to-day practices of federalism;
- . constitutional change.

Each in its own way is important to every Canadian. Therefore, all three must be dealt with effectively, comprehensively and expeditiously.

1. Economic Recovery

The restructuring and recovery of the economy remain Ontario's first priority. In this regard, the Province was pleased that the Conference of First Ministers in February 1978 made a solid start in identifying objectives and policies for strengthening economic growth and development in Canada. While Ontario welcomes the federal government's reaffirmation of these objectives and policies in the Prime Minister's address on August 1st, it is reasonable to expect that that statement should be followed by specific proposals for their achievement indicating the same degree of priority and detail and energy that the national government has so clearly assigned to the constitution.

2. Practices of Federalism

Given the long-demonstrated need to improve the day-to-day operations of our federal system, Ontario welcomes the recognition by the federal government in its booklet "A Time for Action" of the often-stated view of all provinces to eliminate program and policy duplication in areas where both levels of government are involved. Ontario has put forward the case for disentanglement for three years, in such areas as the administration of justice, consumer affairs, and urban affairs, and has communicated its specific concerns to the federal government. The Western Provinces, in two published reports on constitutional trends, have also documented areas of conflict and confusion resulting from federal-provincial overlap. Recently, the Government of Quebec released a study it commissioned on this subject indicating a significant degree of federal and provincial activity in Quebec in the same functional areas.

Thus, the evidence is clear, and the analysis is largely complete. Joint, detailed, time-consuming studies, as suggested by the federal government, are not necessary. What is needed now is a willingness to act, to get on with the job.

Ontario calls on the federal government to show its good faith in this regard by moving at once to reduce its involvement in the far too many areas where it has, without consultation or agreement, moved into the jurisdiction of the provinces. This deeply divisive process continues unabated despite federal professions of good intent and vague promises of change in this critical area of federalism. If the constitution is not to be fully respected by the federal government, then it should not pretend to understand the roots of much of the present alienation that exists in all parts of the country.

Examples of federal initiatives that should be withdrawn as an indication that the federal government means what it says are: the administration of justice, including federal prosecutors, the expanded role of the Federal Court of Canada, and the proposed Canadian Accident Investigation Commission); lotteries; and, the regulation of land use as part of the Canada Ports Act.

3. Constitutional Reform

The federal government recently tabled in the House of Commons draft legislation containing a detailed set of proposals on the constitution. Ontario welcomes this initiative and looks forward to discussing these and other proposals with the federal government when the First Ministers meet in October. While the federal proposals are not comprehensive and should be expanded to include for discussion now such issues as the distribution of powers, they do provide a basis for negotiation and resolution.

II ONTARIO'S APPROACH TO CONSTITUTIONAL CHANGE

Ontario regards constitutional change as a priority in Canada, not because there are pressing reforms that it wishes to achieve, but because it is clear that there are many Canadians who are dissatisfied with the current situation. As it has for over a decade with:

- . its initiative in 1967 of the Confederation of Tomorrow Conference;
- . its contributions to the constitutional review of 1968-71 and again during the discussions in 1976;
- . its creation of an Advisory Committee on Confederation in 1977; and
- . the Premier's call for a better understanding of our national historical heritage in 1978,

← Ontario is willing to consider any proposals for change which are practical, workable, and will contribute to the more effective operation of federalism, and the enhancement of national cohesion in Canada.

The current situation in the country is both a challenge and an opportunity. As the Mayors of Canada recently said in a way which Ontario completely endorses, the issue today is not one of national survival, but rather one of national revival. In responding to the challenge of frustration and dissatisfaction, we have the opportunity to patriate our constitution, to determine an explicit formula for its amendment, and to identify those necessary changes of substance while still retaining those provisions of the constitution which have worked and served our heritage and traditions so well in the past.

Ontario agrees with the Government of Canada that it is important to demonstrate to Canadians across the country that it is possible to make constructive changes to the constitution so that our federal system can work more effectively. Federalism, however, implies a partnership between the two orders of government. Thus constitutional change must be the product of this partnership. It cannot be imposed by any one government. If it is to be constructive and enduring, it must be the product of a genuine national consensus.

Moreover, constitutional review must proceed in a comprehensive fashion. The elements of a constitution are interrelated and therefore cannot be treated on a piecemeal basis. For example, the functions of an upper house or the nature of the amending formula will be influenced by the distribution of powers between the two orders of government. It would, therefore, be difficult to finalize views on some changes without being aware of how the whole package is to look.

III THE PRINCIPLES OF CONSTITUTIONAL CHANGE

Ontario is willing to give serious consideration to any reasonable proposals for constitutional change in Canada. It does so, however, from a framework of basic principles, the affirmation of which it regards as fundamental to the system of government in Canada. In Ontario's view, any proposals for reform must unequivocally respect these principles.

1. The Maintenance of Responsible Government

Canada should continue to have federal and provincial governments which are democratic and parliamentary. Executive authority must be vested in the Crown while being democratically exercised by elected ministers retaining the confidence of a majority of the legislature. Parliament is composed of the monarch and the legislature. The traditional and substantive role of the monarchy is essential to the functioning of responsible government, and thus all these elements should be fully retained.

The monarchy is an essential element of Canada's system of parliamentary, responsible government. Because it is a system where powers are not separated and where, in contrast to the United States, there are no formal checks

and balances between the executive, legislative and judicial branches of government, it requires an ultimate authority to ensure its responsible nature - even though this authority rarely needs to be used. This ultimate authority is provided by the monarch, and thus in no way, shape or form should its place and role be diminished nor should the head of state be appointed by the government of the day.

2. The Integrity of the Federal System

Canada's vast size and its distinctive regions makes federalism the system of government best suited to its needs. Federalism permits a balance of unity and diversity by combining a commitment to political and economic union with a positive encouragement of and respect for regional interests. Thus, there must continue to be two co-equal, autonomous and accountable orders of government in Canada, each with its own clear and distinct set of responsibilities.

To the extent that there are areas of government activity which today are not clearly assigned to either order of government, constitutional reform must be designed to achieve more precision.

To the extent that there are areas of government activity in which both orders of government have become involved, disentanglement of jurisdictions with revenues to match must be pursued as a priority to achieve more clearly defined roles and responsibilities, and a lessening of the financial burden on taxpayers.

This is the central point in Ontario's views on positive constitutional change. Unless the existing bad practices of federalism are curtailed, then other proposed changes to the constitution of a more formal kind are merely hollow gestures devoid of serious intention and calling into question the expressed federal objective of renewing federalism.

To the extent that shifts in current federal and provincial responsibilities are necessary, they should be designed to ensure more complete provincial responsibility for social and cultural matters and more complete federal responsibility for the co-ordination of economic and fiscal matters.'

All of the above changes must result in governments whose roles and accountability is clear to the taxpaying citizen. Fundamental to this achievement, and its maintenance over time, must be the adoption of a new attitude of self-restraint by both orders of government so that each operates strictly within both the spirit and the letter of the constitutional limits of its authority.

3. An Independent Judiciary

In its role as arbiter of the constitution governing all governments, the Supreme Court of Canada must be a court of the whole federation, not of the central government alone. For this reason, the jurisdiction of the Court and the procedures to nominate and appoint its judges should be entrenched in the constitution. Moreover, the court system in Canada should continue to be a single, hierarchical structure with the Supreme Court of Canada at the top as the general appeal court for the whole country.

The Governor-General-in-Council should appoint the judges of the Supreme Court of Canada, and the Superior, District and County Courts of each province, but only after full and formal consultation with the provinces. The procedures of this consultation should be set out in the Constitution.

As regional concerns would be expressed through this consultative process, members of the Supreme Court should be selected on the basis of ability regardless of their geographical origin. The sole exception to this principle should be the judges of the Province of Quebec; because of the unique character of its Civil Code, a minimum number of judges on the Court from Quebec should be guaranteed by the Constitution.

4. The Official Languages of Canada

Respect for our two official languages must be a fundamental element of constitutional reform. English and French should, therefore, be guaranteed by an appropriate, agreed upon constitutional means, such guarantees to be extended across the country in a true national context.

In addition to the rights set out in the Canadian Constitutional (Victoria) Charter of 1971, language guarantees should explicitly provide for the right to minority language education. This right should be included as part of the provincial responsibility for education, currently Section 93 of The British North America Act.

The provision of other services, both as to timing and extent, should be left to the government responsible for them.

In regard to such services, the demonstrated commitment of Ontario to provide its French-speaking population with public services in such key areas as education, the courts, widely used statutes, and in communications between Ontario residents and their provincial government is clear and unequivocal. The Province will continue to provide such services where numbers warrant and where demonstrated need is evident.

5. Economic Union

Federalism in Canada is not only a form of political union but also a form of economic union. The Constitution must, therefore, ensure the free and unimpeded flow of people, goods, capital and services across the country.

Economic union also means equality of economic opportunity. The Constitution, therefore, should state a clear commitment to the enlargement of regional economic opportunities as a goal of Confederation and as a test of national policies.

6. Federal-Provincial Consultation

No matter how clear the distribution of powers may be in a federal system, some overlap of federal and provincial interests and concerns is unavoidable. Their reconciliation depends on two factors: the willingness of governments to co-operate with one another, and central institutions designed so as to encourage this co-operation.

Thus, the reform of existing federal institutions should be so structured to:

- allow for a fuller expression of regional interests as represented by provincial governments;
- respect the accountability of Cabinet to the Commons;
- be directly or indirectly representative of ministers of the Crown; and
- commit each government to respect the outcome of the deliberations.

In this way, national policy-making in Canada can be both decisive nationally and more sensitive to the needs and concerns of the various regions of the country.

CONCLUSION

It is the view of the Government of Ontario that the adoption by all governments in Canada of these three national priorities and the joint affirmation of these six major principles would set the country firmly on the road of successfully meeting the economic and political requirements of all its citizens and their heirs in a fresh and revitalized Confederation.

